

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

STEVEN CHARLES BARGER,

Defendant-Appellant.

UNPUBLISHED

April 18, 1997

No. 190486

Jackson Circuit Court

LC No. 95-72630 FC

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

STEVEN CHARLES BARGER,

Defendant-Appellant.

No. 190487

Jackson Circuit Court

LC No. 95-72672 FC

Before: McDonald, P.J., and Reilly and O'Connell, JJ.

PER CURIAM.

Defendant appeals as of right his convictions of armed robbery, MCL 750.529; MSA 28.797, assault with intent to rob while armed, MCL 750.89; MSA 28.284, and two counts of possession of a firearm during the commission of a felony (felony-firearm). MCL 750.227b; MSA 28.424(2). Although a juvenile, defendant was sentenced as an adult to concurrent sentences of two years' imprisonment with respect to the felony-firearm convictions, to be followed by concurrent sentences of four to twenty years and six to twenty years for the armed robbery and attempted armed robbery convictions, respectively. He now appeals as of right, and we affirm.

Defendant first argues that his confession was not voluntary and that the confession, accordingly, should have been suppressed. Considering the totality of the circumstances, *People v Cipriano*, 431

Mich 315, 334; 429 NW2d 781 (1988), including the necessity of additional safeguards appropriate in the case of a minor, *People v Jackson*, 171 Mich App 191, 197; 429 NW2d 849 (1988), we find defendant's confession to have been made voluntarily. Defendant's interview was arranged a day in advance, his mother and brother accompanied him to the police station, and he was repeatedly told that he could decline to answer questions or simply leave at any time. In fact, following the interview, he did leave the station with his family, as he had been assured he would be allowed to do. Further, he was almost seventeen years old at the time. While it is true that he was not advised of his *Miranda*¹ rights² and that the interview took place at a police station, our independent review of the record, *People v Robinson*, 386 Mich 551, 557; 194 NW2d 709 (1972), fails to persuade us that these factors, considered in light of the totality of the circumstances, *Cipriano, supra; Jackson, supra*, rendered his confession involuntary.

Defendant next submits that the trial court abused its discretion in sentencing him as an adult. The court conducted a juvenile sentencing hearing as it was required to do pursuant to MCL 769.1; MSA 28.1072, and considered a wide range of factors as enumerated in MCR 6.931(E)(3). Our review of the evidence presented at the hearing indicates that the court's factual findings were clearly supported by a preponderance of the evidence, MCR 6.931(E)(2), and we find no abuse of discretion in the court's ultimate determination to sentence defendant as an adult. *People v Passeno*, 195 Mich App 91, 103-105; 489 NW2d 152 (1992).

Last, defendant contends that the sentences imposed violate the principle of proportionality. See *People v Milbourn*, 435 Mich 630; 461 NW2d 1 (1990). In this context, defendant does little more than recast his argument that he should have been sentenced as a juvenile, a position already considered and rejected by both this Court and the sentencing court. Given that the sentences imposed were within the guidelines and, thus, presumptively proportionate, *People v Broden*, 428 Mich 343, 354-355; 408 NW2d 789 (1987), and that defendant has presented no "unusual circumstances" warranting a downward departure, *People v Sharp*, 192 Mich App 501, 505-506; 481 NW2d 773 (1992), we find no abuse of discretion.

Affirmed.

/s/ Gary R. McDonald
/s/ Maureen Pulte Reilly
/s/ Peter D. O'Connell

¹ *Miranda v Arizona*, 384 US 436; 86 S Ct 1602; 16 L Ed 2d 694 (1966).

² As defendant concedes on appeal, because he was not subjected to a custodial interrogation there was no legal requirement that he be apprised of his *Miranda* rights. However, given defendant's relative youth, we have considered the fact that he was not so apprised. *Jackson, supra*.